United Nations A/HRC/WGAD/2017/91

General Assembly

Distr.: General
22 January 2018

Original: English

Human Rights Council
Working Group on Arbitrary Detention9788

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 91/2017 concerning Imran Abdullah (Maldives)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 16 May 2017 the Working Group transmitted to the Government of Maldives a communication concerning Imran Abdullah. The Government replied to the communication on 31 July 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

GE.18-00683(E)

1800683

Please recycle

Submissions

Communication from the source

4. Imran Abdullah is a 42-year-old national of Maldives. He is the head of the opposition islamist Adhaalath Party and a religious scholar.

Arrest and detention

5. According to the source, Mr. Abdullah was arrested on 1 May 2015, at around 11 p.m., during a meeting at the residence of another political figure in Male', by five members of Maldives Police Service. One of the officers appeared to be in charge of the group and wore a dark blue police uniform and a nametag, while the other four wore riot gear with masks over their faces and did not show any kind of identification.

6. The arresting officers presented a warrant, issued by the Maldivian Criminal Court, ordering the arrest of Mr. Abdullah in connection with an investigation related to a rally held on 1 May 2015. According to reports, the rally had been organized to call for the release of political prisoners and for the establishment of justice and accountability in the country. Mr. Abdullah had reportedly been involved in the rally by giving a public speech. However, the source claims that the investigation was not focused on Mr. Abdullah's speech, instead its aim was to demonstrate that Mr. Abdullah did not personally act to halt the violent incidents that took place in different parts of the city during the night of 1 May 2015, when the rally degenerated into a riot. Partly as a consequence of his speech, Mr. Abdullah was held responsible for the ensuing violence.

7. According to the source, following his arrest, Mr. Abdullah was held in solitary confinement at Dhoonidhoo Island Detention Centre, a facility which, according to monitoring bodies and previous Governments, is not fit to accommodate people. The police refused to grant Mr. Abdullah access to a lawyer for the first 18 hours of his detention and only allowed him to see his lawyer prior to taking him to Male' for his remand hearing, reportedly in contravention of article 48 (b) of the Maldivian Constitution. At the hearing, the Criminal Court ordered that Mr. Abdullah be held on remand for 15 days, pending an investigation. The period of remand was later extended for an additional 10 days.

8. Mr. Abdullah's defence counsel reportedly appealed against this remand ruling before the High Court, which overturned it on 27 May 2015, citing Mr. Abdullah's ill-health and ordered that he be transferred to his domicile and placed under house arrest. However, later that day, the police allegedly made an additional remand request to the Criminal Court, which imposed a travel ban on Mr. Abdullah.

9. The source reports that, on the same day, President Abdulla Yameen Abdul Gavoom publicly stated that he would ensure that criminal charges were brought against Mr. Abdullah. The police subsequently arrested Mr. Abdullah again on 1 June 2015 on the basis of a court order.

Court proceedings

10. The source highlights that, on 1 June 2015, the Prosecutor General's Office charged Mr. Abdullah with inciting terrorism and violence, under section 2 (g) of Act No. 10 on the Prevention of Terrorism of 1990, in connection with his activities on 1 May 2015. The Prosecutor General's Office reportedly cited Mr. Abdullah's speech at the rally, in which he said that, by the end of the day, President Yameen would have to ask the Vice-President and the Commissioner of Police to "go home" (resign).

11. The source reports that the Criminal Court called for the first hearing to take place on the following day, 2 June 2015, making it impossible for the defence counsels to register with the Court 48 hours prior to the hearing, in line with court procedure. However, the judge reportedly allowed the defence lawyers to attend the proceedings and address the Court during the hearing. At the hearing, the Court reportedly ordered Mr. Abdullah's detention for the period of the trial. The source notes that article 49 of the Constitution states that an individual may be kept in pretrial detention if there is a risk that he or she might manipulate evidence and influence witnesses, abscond from trial, or become a threat

to public order. However, the source submits that none of these elements were taken into account when considering the issue of Mr. Abdullah's liberty during his trial.

12. According to the source, Mr. Abdullah requested to be transferred to house arrest when he was moved to Maafushi Island Prison on 23 July 2015. The Chief Judge of the Criminal Court granted that request and ordered the transfer on 5 August 2015. However, Mr. Abdullah was summoned to the Court for a hearing within 24 hours of the transfer. A judge reportedly reversed the decision of the Chief Judge based on a police intelligence report, the contents of which were allegedly not shared with the defence lawyers. The source further notes that Mr. Abdullah was then held at the Dhoonidhoo Island Detention Centre from 6 August 2015 until his transfer to Himmafushi Prison on 31 August 2015.

13. When Mr. Abdullah was summoned to a third hearing, two of the three judges concerned were reportedly away on leave. According to the source, the trial began with a judge announcing that he alone would be presiding over the case, following the dissolution of the previous three-member panel of judges by the Chief Judge. The source highlights that, during the hearing, the judge was particularly harsh and rude towards the defence lawyers, accusing them of misleading the court and making statements supportive of the charges presented by the prosecution. The defence lawyers allegedly raised this issue when the judge was formulating intimidating remarks and questions. The judge then issued a verbal warning and ordered the defence lawyers to apologize, which they did.

14. The source reports that the Court allowed a State witness to speak anonymously at the hearing from a location outside the courtroom. Mr. Abdullah's lawyers had the impression that the witness was reading out a written document, rather than speaking from memory. The defence lawyers reportedly noted that they found it difficult to cross-examine the witness, as his identity was withheld and they did not have any information about him. When the witness was asked whether he was employed by a private institution or by the State, the judge allegedly interrupted the proceedings, requesting the witness not to respond to the question.

15. The Criminal Court reportedly barred all of Mr. Abdullah's witnesses from the trial, stating that the defence lawyers should have declared their intent to produce witnesses at the beginning of the trial.

16. The source highlights that the long delays in conducting the trial were justified by the Criminal Court saying that they were waiting for a larger courtroom to be prepared in which to hold the hearings. However, no more than 10 observers, including members of the media, were allowed inside the courtroom. The reason given for that restriction was a lack of space. The Criminal Court has reportedly held trials in the same courtroom at which over 40 observers were in attendance.

17. On 16 February 2016, the Criminal Court sentenced Mr. Abdullah to 12 years' imprisonment. The source notes that, on 8 March 2016, the defence team lodged an appeal with the High Court, which upheld Mr. Abdullah's sentence on 23 April 2017. Mr. Abdullah is currently being detained at the high-security Maafushi Island Prison.

Conditions of detention and access to a doctor

18. According to the source, Mr. Abdullah was held in solitary confinement at the Dhoonidhoo Island Detention Centre for 25 days and then held in solitary confinement in a "VIP room" for a further 25 days. Following his transfer to Maafushi Island Prison, on 23 July 2015, his health reportedly deteriorated rapidly due to the fact that he is diabetic and was served inappropriate food at the Prison and the fact that he was not given access to medical care for back pain caused by sleeping on a slab of concrete in the solitary confinement cell of the Dhoonidhoo Detention Centre.

19. The source submits that Mr. Abdullah was once again transported to the Dhoonidhoo Detention Centre, where he was then reportedly subjected to additional inhumane treatment. He did not receive a Qur'an for the first 24 hours of detention. In addition, Mr. Abdullah was not given a prayer mat for the first three days of detention and had to pray on the concrete floor of his cell, a situation which caused scabs to form on his knees as a result of bleeding. Mr. Abdullah reportedly requested to see a doctor but did not

have access to one for two weeks, during which time he had developed a skin condition and could not sit up for long periods of time due to back pain.

20. Following Mr. Abdullah's transfer to Himmafushi Prison on 31 August 2015, he reportedly did not have access to medical facilities and was provided with meals unsuitable for diabetics, even though the judge had specifically ordered the State to ensure Mr. Abdullah's access to medical facilities and to accommodate his dietary requirements during his detention.

Analysis of violations

21. The source submits that the arrest and detention of Mr. Abdullah is arbitrary under categories I, II, III and V of the categories applicable to the cases submitted to the Working Group on Arbitrary Detention.

22. According to the source, the arrest and detention of Mr. Abdullah is arbitrary under category I, as the arrest warrant stated that Mr. Abdullah was to be arrested as a part of an investigation related to the rally, whereas, under article 46 of the Maldivian Constitution, an arrest can only be made based on an allegation relating to an offence. The source also states that the legal grounds for the imposition of pretrial detention were not met.

23. In addition, the source submits that the deprivation of liberty of Mr. Abdullah falls under category II, as it was a result of his exercise of the rights to freedom of opinion and expression, freedom of thought, conscience and religion, freedom of assembly and association, as well as the right to participate in public affairs, as guaranteed by articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and by articles 18, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights (the Covenant). The source believes that Mr. Abdullah's arrest was a way of taking revenge on him for having withdrawn from the ruling political coalition.

24. The source submits that Mr. Abdullah's deprivation of liberty also falls under category III, as the international norms relating to the right to a fair trial have been violated, specifically articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The source highlights that Mr. Abdullah was not granted sufficient time to appoint a lawyer and to properly prepare for the trial and was not allowed to present witnesses on his behalf and to cross-examine the prosecution witnesses. The source also notes: the sudden change in the composition of the panel of judges hearing the case, from a bench of three judges to a single judge; the clear disregard for Mr. Abdullah's arguments by the presiding judge; and several incidents of bias in favour of the State by the judge during the trial which reportedly had a negative impact on the independence and impartiality of the trial and sentencing.

25. Finally, the source submits that the detention of Mr. Abdullah is arbitrary under category V, as he has reportedly been persecuted for having stirred up dissent against the current Government. The Government reportedly turned against Mr. Abdullah when he declared that he and the Adhaalath Party had decided to withdraw from the ruling coalition, stating that the Government had carried out actions contrary to democratic principles and to its election pledges. Mr. Abdullah later joined the opposition coalition and continued to raise issues with and criticize the Government, at times disclosing sensitive information about activities involving the Government and the ruling party and its affiliated public officials.

Response from the Government

26. On 16 May 2017, the Working Group transmitted the source's allegations to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 17 July 2017 concerning Mr. Abdullah's current situation and any comments that it might have on the source's allegations.

27. On 31 May 2017, the Government sought an extension of the time limit for submitting its response. In conformity with paragraph 16 of its methods of work, the Working Group granted the Government an extension of two weeks, allowing it until 31 July 2017 to submit its response.

28. In its response of 31 July 2017, the Government categorically denies that Mr. Abdullah has been a victim of a politicized process; that there has been a complete nullification of his rights under national and international law, with his trial and conviction amounting to a flagrant denial of justice; and that he was kept in solitary confinement or denied access to medical care.

29. According to the Government, a rally organized by Mr. Abdullah and the Adhaalath Party on 1 May 2015 on the theme of bring an end to brutality converged upon the Green Zone, a protected area where key Government institutions and security installations, including the President's Office, the headquarters of Maldives National Defence Force and the headquarters of Maldives Police Service, are located. Mass demonstrations and gatherings near those premises are prohibited under section 24 of Act No. 2 on the Freedom of Peaceful Assembly of 2013.

30. In the resulting clashes with the police, property was destroyed and 26 officers were injured. Mr. Abdullah reportedly failed to call off or end the rally and to halt the ensuing violence, despite being responsible, as the organizer, for resolving any situation where there was a dispute, or an act of violence, or any damage to property or harm to individuals, pursuant to section 52 (a) of Act No. 2 on the Freedom of Peaceful Assembly of 2013.

31. According to the Government, on 1 May 2015, Mr. Abdullah was arrested at his residence at around 11.05 p.m., for an alleged act of terrorism committed during the rally. On 1 May 2015, he was taken to Dhoonidhoo Island Detention Centre (a police custodial facility) and, on 2 May 2015, he was brought before the Criminal Court for his remand hearing, at which he was represented by his lawyers. At the hearing, the Criminal Court ordered that that Mr. Abdullah be held in police custody for a period of 15 days. On 7 May 2015, he lodged an appeal with the High Court against the Criminal Court's 15-day remand order. On 14 May 2015, the High Court upheld the 15-day remand order.

32. On 17 May 2015, Mr. Abdullah was brought before the Criminal Court for his second remand hearing, at which he was again represented by his lawyers and the Criminal Court ordered that he be held in police custody for a further 10 days. On 25 May 2015, Mr. Abdullah lodged an appeal with the High Court against his second 10-day remand order and, on 27 May 2015, he was brought before the High Court for his second remand appeal hearing, at which his lawyers were present. The High Court, in consideration of the state of Mr. Abdullah's health, overturned the Criminal Court's 10-day remand order and ordered instead that he be kept under house arrest for a period to be determined by the Criminal Court.

33. On 27 May 2015, as Mr. Abdullah's second 10-day remand order issued by the Criminal Court on 17 May 2015 expired, he was brought before the Criminal Court for his third remand hearing. At the hearing, at which Mr. Abdullah was represented by his lawyers, the presiding judge ordered his release in consideration of the High Court's decision handed down on that same day. The police requested a 30-day overseas travel ban relating to Mr. Abdullah, which was granted by the presiding judge, and Mr. Abdullah was released from police custody.

34. The Government states that, on 1 June 2015, the Prosecutor General filed a charge with the Criminal Court against Mr. Abdullah under section 2 (g) of Act No. 10 on the Prevention of Terrorism Act of 1990. On that same day, the Criminal Court ordered that Mr. Abdullah be arrested and brought to trial. On 2 June 2015, Mr. Abdullah's trial commenced with the first hearing at the Criminal Court before a panel of three judges.

35. At the same hearing, the Prosecutor General requested Mr. Abdullah's remand until the end of the trial and the three-judge panel unanimously ruled that he be remanded at a place determined by the Ministry of Home Affairs based on the seriousness of the charges against him and the police intelligence report.

36. On 5 August 2015, upon request by his lawyers, Mr. Abdullah was brought before the Criminal Court for review of his detention. In view of the state of Mr. Abdullah's health, the judge ordered that he be placed under house arrest and Mr. Abdullah was taken to his home.

37. On 6 August 2015, following an application from Maldives Police Service, Mr. Abdullah was brought before the Criminal Court for review of the decision of the previous day concerning his placement under house arrest. Based on a new police intelligence report submitted to the Court, the presiding judge ruled that Mr. Abdullah be held on remand until the end of the trial at a place determined by the Ministry of Home Affairs. As a result of that ruling, Mr. Abdullah was taken to a remand facility in Male' Jail on the same day.

38. On 13 October 2015, Mr. Abdullah again requested the Criminal Court to review his detention. A panel of judges unanimously determined that he be placed under house arrest in consideration of the state of his health. The Court also ordered Mr. Abdullah to notify the police if he were to leave his house and informed him that any violation of this condition would result in the review of his house arrest.

39. The third hearing in Mr. Abdullah's trial was held on 17 January 2016. Because of the transfer of two of the three judges adjudicating Mr. Abdullah's case to the High Court bench, a shortage of judges and a heavy caseload, the Chief Judge used his prerogative under section 55 of Act No. 22 on the Judicature of 2010, to reassign Mr. Abdullah's case to a one-judge panel. The fourth and fifth hearings in Mr. Abdullah's trial were held on 18 and 24 January 2016.

40. The Government reports that, on 6 February 2016, the Criminal Court reversed the decision made on 13 October 2015 to place Mr. Abdullah under house arrest and remanded him at a place determined by the Ministry of Home Affairs until a verdict was reached in his case at the Criminal Court. Following the handing down of the Criminal Court's order, Mr. Abdullah was transferred to Asseyri Prison on Himmafushi Island.

41. On 10 February 2016, the sixth hearing in Mr. Abdullah's trial was held. On 15 February 2016, the Criminal Court heard closing statements from the Public Prosecutor and Mr. Abdullah's lawyer.

42. On 16 February 2016, the Criminal Court found Mr. Abdullah guilty under section 2 (g) of Act No. 10 on the Prevention of Terrorism of 1990 and sentenced him to 12 years' imprisonment. He was taken back to Himmafushi Island to serve his sentence in the special protection unit of Asseyri Prison.

43. On 8 March 2016, Mr. Abdullah appealed against the Criminal Court's judgment to the High Court. On 24 March 2016, the first appeal hearing was held. On 4 April 2016, Mr. Abdullah was reportedly transferred to house arrest as a result of renovation work at the special protection unit of Asseyri Prison. On 7 April 2016 and 21 March 2017, the second and third hearings were held.

44. On 23 April 2017, the High Court confirmed the Criminal Court's judgment of 16 February 2016. On the same day, Mr. Abdullah was taken back to the newly built special protection unit of Maafushi Prison. On 26 May 2017, Mr. Abdullah was transferred to house arrest for the month of Ramadan and, on 30 June 2017, he was returned to Maafushi Prison.

45. According to the Government, Mr. Abdullah was represented by his lawyers throughout both the investigation and the trial.

46. The Government states that, as Mr. Abdullah was convicted by a Maldivian Court in accordance with domestic law, his detention cannot fall under category I. Mr. Abdullah was arrested under a warrant issued by a court in accordance with article 46 of the Constitution. Mr. Abdullah's speech at the rally, in which he incited fear and hatred, leading to the injury of 26 police officers and acts of vandalism in the Green Zone, amounted to the use of terror tactics, force or making threats to cause harm or damage to person(s) or property orally, or in writing, or by other means to create fear amongst the community under section 2 (g) of Act No. 10 on the Prevention of Terrorism of 1990.

47. The Government also states that Mr. Abdullah's pretrial detention was in conformity with article 49 of the Constitution, which states that no person is to be detained in custody prior to sentencing, unless the danger of the accused absconding or not appearing at trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise. The police and the courts cited public safety as the grounds for the remand

orders concerning Mr. Abdullah. Mr. Abdullah's pretrial detention also met the additional requirements — under the domestic case law established by Maldivian High Court judgment Nos. 2012/HC-A/263 and 2012/HC-A/265 — that the alleged offence must be of a serious nature and that probable reason or evidence must exist to support the suspicion that the person concerned committed the alleged offence.

48. With regard to the source's claim that Mr. Abdullah's deprivation of liberty falls within categories II and V, the Government claims that his trial and conviction for individual criminal acts relate neither to his exercise of human rights nor to discrimination on the basis of his political opinions. Mr. Abdullah was responsible for inciting the demonstrators to bring an end to brutality and to rise up in a different manner against a lawful government, resulting in injuries to police officers and the destruction of public and private property. It is also evident that neither his political opinions nor his position were taken into account during his trial.

49. The Government also refutes the alleged total or partial non-observance of fair trial and due process rights that amount to category III. In the Government's view, it is beyond the remit of the Working Group to evaluate the evidence in Mr. Abdullah's case, as the Working Group has consistently refrained from taking the place of the judicial authorities or acting as a kind of supranational tribunal when, as in the present case, it has occasion to verify the conditions of the judiciary's application of domestic law. When it examines a communication, it prefers not to query the facts and evidence of the case.[1]

50. The Government also rejects any charge of cruel, inhuman, or degrading treatment or punishment. Regarding Mr. Abdullah's alleged solitary confinement during the pretrial and trial stages, the Government states that he was held in a detention cell located within a unit where he was allowed to go out for walks and the adjacent cells were occupied by persons who were also kept in custodial detention. The so-called "VIP rooms" were more comfortable and had more facilities than ordinary custodial cells, and Mr. Abdullah was placed in one such room out of consideration for the state of his health.

51. The Government also refutes the claim that Mr. Abdullah was denied access to medical care. During the pretrial and trial stages, Mr. Abdullah had 20 medical consultations, of which 8 were with specialist doctors in hospitals/clinics in Male'. Since the beginning his sentence on 16 February 2016, Mr. Abdullah has had 19 medical consultations, of which 18 were with specialist doctors in hospitals/clinics in Male'.

52. The Government further asserts that, following Mr. Abdullah's request of 6 May 2015 that he be given food suitable for diabetics on 6 May 2015, which was duly recorded and addressed in the case diary attached to the Government's submission, he was served food from the standard dietary menu for diabetics in police custodial facilities and prisons.

53. In addition, the Government notes that the source does not allege that Mr. Abdullah was denied regular access to or communication with his family and lawyers during all stages of his detention. During the pretrial and trial stages, Mr. Abdullah had 13 phone calls with his family, 21 phone calls with his lawyers and 14 meetings with his lawyers.

54. The Government argues that the Working Group does not examine complaints about instances of detention and subsequent disappearance of individuals, about alleged torture, or about inhuman conditions of detention as long as they do not affect the trial as established in Fact Sheet No. 26 of the Working Group and its jurisprudence.[2]

55. The Government nevertheless adds that incommunicado detention lasting a few days is authorized under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

56. According to the Government, even if the Working Group finds procedural irregularities in the case of Mr. Abdullah, they are not of such gravity as to render the deprivation of liberty arbitrary under the "double threshold" rule for the determination of

[1] See opinion No. 40/2005, para. 22.

[2] See opinions No. 41/1996; No. 7/2007; No. 28/2007; and No. 12/2007. See also the Government's submissions in opinion No. 25/2007.

category III that there must first have been a violation of due process rights and, thereafter, that the violation must be of sufficient importance — a flagrant denial of justice — so as to declare the deprivation of liberty arbitrary.[3]

57. In terms of remedies, the Government asserts that Mr. Abdullah has had ample opportunity to challenge the rulings of the courts and that, consequently, his detention cannot be considered to be arbitrary on this point.[4]

58. As for the equality of arms, the Government asserts that Mr. Abdullah was given ample time and facilities to prepare his defence. According to the Government, the fact that Mr. Abdullah was not granted 48 hours to prepare his defence prior to the first hearing did not constitute a problem, as he had over 4 months prior to the first and second hearings to make preparations. The length of Mr. Adbullah's trial before the Criminal Court (8 months and 15 days) was not untypical of cases involving serious criminal offences. The delay was caused by the transfer of two judges to the High Court and the request by Mr. Abdullah's lawyers to be given enough time to prepare his defence. The Government also claims that only 10 observers had requested admittance.

59. With regard to the lack of defence witnesses, the Government claims that, on 13 October 2015, the defence lawyers requested permission to submit the speech given by Mr. Abdullah at the rally held on 1 May 2015 as evidence, stating that they did not wish to submit any further evidence. Both the prosecution and the defence had the opportunity to cross-examine the prosecution witnesses, including in relation to video footage.

60. As for the anonymous prosecution witness, the Government argues that his anonymity was preserved for his protection and claims that the following three-prong test for anonymous witnesses, as set out by the European Court of Human Rights, was met:

(a) Anonymity must be necessary and the court must know the witnesses' identities;

(b) The evidence given by the anonymous witnesses must not be the sole or the decisive evidence demonstrating the guilt of the accused;

(c) There must be certain procedural safeguards; in particular, the defence must be able to question the anonymous witnesses.[5]

61. In addition, the Government acknowledges the equality of arms issue raised by the confidential police information reports that were used to overturn the house arrest orders. However, the Government argues that it merely changed the place of detention from Mr. Abdullah's house to a facility designated by the Ministry of Home Affairs. The fact of his detention was not affected.

62. The Government does not consider that Mr. Abdullah's lack of access to his lawyers prior to the remand hearing on 2 May 2015 constitutes an issue, as he was allowed to meet with his lawyer at court.

63. Furthermore, the independence and impartiality of the judiciary was reportedly not compromised by the replacement of the three-judge panel with a one-judge panel. All the judges presiding over Mr. Abdullah's case at the Criminal Court and the High Court acted in accordance with the law and procedure, gave equal opportunity to both sides to present their case and at no time showed any favour or bias towards the prosecution.

64. Finally, noting the observations made by the Working Group in its previous opinions addressed to Maldives[6] in relation to irregularities affecting the overall criminal justice system, the Government alludes to recent judicial reforms in the country, including the enactment of the first Criminal Procedure Code, which entered into effect on 2 July 2017.

---

[3] See opinions No. 11/2004; No. 20/2004; No. 28/2005; No. 36/2005; No. 44/2006; and No. 7/2007.

[4] See opinions No. 15/2005; No. 15/1996; No. 14/2002; and No. 41/1996.

[5] European Court of Human Rights, *Doorson v. the Netherlands*, application No. 20524/92, 26 March 1996.

[6] See opinions No. 33/2015; No. 59/2016; and No. 15/2017.

Further comments from the source

65. On 2 August 2017, the Government's response was sent to the source for further comments. In its response of 14 August 2017, the source states that the Government has failed to factually refute the original allegations. The Government claimed to have respected Mr. Abdullah's rights from the beginning of the trial, whereas the initial violations of his rights began on 1 May 2015, when he was arbitrarily arrested and endured additional violations of law and procedure. The source asserts that this situation renders any subsequent actions taken unjust.

66. The source reiterates the political nature of Mr. Abdullah's arrest and trial, highlighting the speech in which President Yameen vowed to see him prosecuted. The source has also provided the observation reports on the rally of 1 May 2015 and states that Mr. Abdullah's trial was marked by glaring violations of the laws and procedures on several occasions, such as denial of legal access during detention and failure to give adequate notice to Mr. Abdullah's lawyers prior to hearings.

67. The source asserts that the Government's response is groundless. Mr. Abdullah suffered immensely while held in State custody and his health has deteriorated significantly due to a lack of medical care. At the time of writing, Mr. Abdullah's family and legal team had not received any response to their requests for visits and meetings with him. The prison staff continue to deny Mr. Abdullah meals appropriate for diabetics, resulting in severe fluctuations in his blood sugar level. Mr. Abdullah is currently being held on death row, with no fan, no light and no mattress, and only a concrete slab to sleep on.

68. The source highlights that the registrar of the Supreme Court has not yet accepted Mr. Abdullah's appeal and that there is no end in sight in that regard.

Discussion

69. The Working Group thanks the source and the Government for their extensive engagement and for their submissions in relation to Mr. Abdullah's detention. The Working Group reiterates that, for the future and in accordance with its revised methods of work, communications and replies shall not exceed 20 pages and any additional material, including annexes, exceeding that limit may not be taken into account by the Working Group (see A/HRC/36/38, paras. 11 and 15).

70. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

71. The Working Group recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[7]

Category I

72. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I, when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.

73. With regard to the source's claim that Mr. Abdullah's arrest warrant was invalid under the Constitution,[8] the Working Group refrains from taking the place of the national

[7] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, at para. 55, pp. 660–661; opinions No. 41/2013, para. 27; and No. 59/2016, para. 61.

[8] Arts. 46 and 47 of the Maldivian Constitution, available from www.presidencymaldives.gov.mv/Documents/ConstitutionOfMaldives.pdf.

judicial authorities or acting as a kind of supranational tribunal by analysing the validity of the arrest warrant, which is a matter of domestic law, unless it can be said that a rational and fair person necessarily would admit that the arrest warrant would infringe fundamental principles of human rights as they have been understood by the international community and international law.

74. The Working Group wishes to point out that persons deprived of their liberty have the right to legal assistance at all times, a right that is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law under articles 3 and 9 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant. Principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment refers to the right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his or her legal counsel, while principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court states that persons deprived of their liberty have the right to legal assistance at any time during their detention, including immediately after the moment of apprehension.

75. Whereas the Government has not explained why it took 18 hours for Mr. Abdullah to obtain access to his lawyers, the Working Group considers that such a delay must remain absolutely exceptional and be justified under the circumstances. In this particular case, it appears difficult to find justification for the delay, especially since Mr. Abdullah was held in solitary confinement during this initial period of detention until his presentation before the remand hearing.

76. The initial solitary confinement also violated Mr. Abdullah's right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1), (3) and (4) of the Covenant.

77. Concerning Mr. Abdullah's pretrial detention, although the Government claimed that public safety required his remand, the Working Group notes that such concern, even if it were genuine, could have been adequately addressed by placing him under house arrest, a less severe form of deprivation of liberty preferred by Mr. Abdullah and his lawyers, instead of police custody, an unnecessarily and disproportionately harsh regime of detention, without prejudice to the arbitrariness of either house arrest or police custody.[9] Indeed, the courts repeatedly ordered that Mr. Abdullah be transferred to house arrest, only to have their decisions subsequently overturned in questionable circumstances.

78. The Working Group underlines that the right to liberty and security of the person prohibits arbitrary arrest and detention, as guaranteed in articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. As stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with such procedures as are established by law (see A/HRC/30/37, para. 12).

79. The Working Group therefore considers that Mr. Abdullah's pretrial detention lacked legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant. The Working Group thus concludes that his detention is arbitrary, falling within category I.

Category II

80. The Working Group recalls that the right to hold and express opinions, including those that are not in accordance with official government policy, is protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

[9] See deliberation No. 1 of the Working Group (E/CN.4/1993/24), para. 20.

81. The Working Group is of the view that Mr. Abdullah, as the leader of the islamist Adhaalath Party, was exercising those fundamental freedoms under international human rights law when, owing to political differences, he led his party out of the ruling coalition and into opposition, in order to criticize the Government's autocratic tendencies and to organize protest rallies on the theme of bringing an end to brutality, and was arrested, tried and sentenced to 12 years' imprisonment.

82. The Working Group also notes that Mr. Abdullah is not the only Maldivian political opposition leader to have been deprived of his liberty for having exercised fundamental freedoms and human rights. Like other opposition figures, Mr. Abdullah also faces terror charges.[10] The Working Group considers that his position as leader of a political party that withdrew from the ruling coalition was a relevant factor in his arrest and detention.

83. While the Government claims that Mr. Abdullah is responsible for the violent clashes with the police at the Green Zone that saw injuries and acts of vandalism, the Working Group must respectfully disagree with this claim. The Government does not contend that Mr. Abdullah personally took part in the violent clashes, but argues that he incited the demonstrators to violence through his speeches. However, while his public call for Maldivians to rise up in a different manner was clearly intended to mobilize the demonstrators to protest and was very critical of the Government, it did not refer to any form of violence.[11]

84. As the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies stated in their recent joint report, while organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.[12] The right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature.[13]

85. For these reasons, the Working Group is of the opinion that Mr. Abdullah's deprivation of liberty violates articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 21, and 25 of the Covenant, falling within category II.

Category III

86. The Working Group will now consider whether the violations of due process and fair trial rights suffered by Mr. Abdullah were of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

87. The Working Group notes that a defendant's right to legal assistance should not be limited to its availability during the trial. Defendants must have adequate time and facilities for the preparation of their defence and to communicate with counsel, in accordance with article 14 (3) (b) of the Covenant. This assumes that the detainee enjoys access to legal counsel at all stages of detention. The source asserts, and the Government has not disputed, that Mr. Abdullah did not have adequate time and facilities to prepare for his first remand hearing, a part of the broader trial proceedings, following his arrest on 1 May 2015.

88. The Working Group has found that denial of access to all documents supporting a detention, along with effective prevention from challenging the legality of detention,

[10] See *opinions* No. 59/2016, and No. 33/2015.

[11] See opinion No. 22/2017, para. 73.

[12] See A/HRC/31/66, para. 26; and opinion No. 22/2017, para. 74.

[13] See A/HRC/31/66, para. 20, citing European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00, 4 May 2004.

violates article 9 of the Covenant.[14] In the present case, the Working Group finds it troubling that, on a number of occasions, the Government submitted confidential police information reports to the courts in order to thwart Mr. Abdullah's request for house arrest in lieu of police custody during the pretrial and trial stages. It was difficult, if not impossible, for Mr. Abdullah's lawyers to prepare his defence against such secret materials. Given that Mr. Abdullah had already been released or placed under house arrest by court orders on previous occasions without prejudice to the investigation or trials, it is difficult to justify such actions by the authorities and the courts' deference to the police on the matter.

89. The Working Group also expresses its concern that the first hearing of the trial at the Criminal Court was held on 2 June 2015 before Mr. Abdullah had had adequate time and facilities for the preparation of his defence. Given the subsequent delays in trial proceedings, it is difficult for the Working Group to understand the Court's decision to rush the first hearing. The time granted after the first hearing cannot fully remedy the damage done to Mr. Abdullah's position. This is especially problematic as the failure by Mr. Abdullah's lawyers to submit a list of witnesses before the opening of the trial was used as an excuse by the Court to refuse to hear any defence witnesses.

90. No less problematic is the use of the anonymous witness for the prosecution at the trial. While there may indeed be exceptional circumstances where the identity of the witness may be kept confidential, the Government has failed to state convincingly the reason for his anonymity. Mr. Abdullah's lawyers were reportedly not even permitted to ask questions about his private or public employment status. Such a practice poses a grave danger to the principle of the equality of arms, as the defence has to evaluate or challenge the credibility of the witness with little information. The Working Group also notes the source's observation that the witness sounded as if he was reading out a prepared text.

91. The Working Group also notes with concern the Criminal Court's refusal to hear any witnesses for the defence.[15] The failure to submit a list of witnesses prior to the opening of the trial is a rather unsound ground for denying this minimum guarantee for criminal defendants. Combined with the anonymous prosecution witness, the Working Group is of the view that the lack of defence witnesses constitutes a serious violation of article 14 (3) (e) of the Covenant.

92. The transfer to the High Court of two of the three judges assigned to Mr. Abdullah's trial before the Criminal Court constitutes another issue of concern for the Working Group. While personnel changes within the judiciary may necessitate reassignment of trial judges, the Working Group notes that it is unusual to see a three-judge panel shrink to a one-judge panel.

93. The Working Group also considers that the delays during the trial proceedings, as well as the failure of the registrar of the Supreme Court to accept Mr. Abdullah's appeal, violate Mr. Abdullah's right to trial without undue delay under articles 9 (3) and 14 (3) (c) of the Covenant. The Supreme Court's continuing failure to hear Mr. Abdullah's appeal also seems to violate his right to have his conviction and sentence reviewed by a higher tribunal according to law, in accordance with article 14 (5) of the Covenant.

94. The Working Group further expresses its regret at the ill-treatment suffered by Mr. Abdullah, including the 25-day solitary confinement, failure to promptly provide a Qur'an and to provide a prayer mat, with harmful effects on his knees, as well as failure to provide medical care and meals appropriate for diabetics, despite a court order to that effect. Those elements are indicative of violations of article 5 of the Universal Declaration of Human Rights and articles 7 and 10 of the Covenant. In particular, the Working Group notes that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has defined solitary confinement in excess of 15 days as prolonged, at which

[14] See opinions No. 31/2017, paras. 32–33; and No. 44/2017, paras. 34–36. The Working Group has also noted the Human Rights Committee's request to Israel to end the use of secret evidence in administrative detention proceedings in the Occupied Territories, see CCPR/C/ISR/CO/4, para. 10.

[15] See also opinion No. 29/2017, para. 66.

point some of the harmful psychological effects of isolation can become irreversible.[16] Such prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture (see A/63/175, paras. 56 and 77). The Working Group also reminds the Government of its obligation as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

95. In the light of the foregoing, the Working Group concludes that the non-observance of the international norms relating to the right to a fair trial established in articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant is of such gravity as to amount to a flagrant denial of justice and to give Mr. Abdullah's deprivation of liberty an arbitrary character, falling under category III.

Category V

96. The Working Group will now examine whether Mr. Abdullah's deprivation of liberty constitutes illegal discrimination under international law, falling within category V.

97. While the Government claims that Mr. Abdullah was tried and convicted for his individual criminal acts and not his political or other views, the Working Group has already established that Mr. Abdullah's arrest, detention and imprisonment resulted from his exercise of the rights to freedom of expression, assembly and association and political participation. When it is established that Mr. Abdullah's deprivation of liberty resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.

98. The Government tellingly claims that it arrested and prosecuted demonstrators other than Mr. Abdullah, while denying discriminatory intent or treatment on its part. However, this mass arrest highlights the Government's indiscriminate prejudice and bias against all of those demonstrators who took to the streets on 1 May 2017 because of their political or other views and their desire to exercise their civil and political rights, regardless of their individual responsibility for causing violence or committing other illegal acts. Mr. Abdullah's critical speech, as well as his position as the leader of an opposition party that had withdrawn from the ruling coalition, also deserves consideration.

99. As in another recent case that concerned the arrest, detention and imprisonment of another prominent opposition politician in Maldives, the Working Group cannot help but notice that Mr. Abdullah's political views are clearly at the centre of the present case and that the authorities have displayed an attitude towards Mr. Abdullah which can only be characterized as discriminatory.[17] The Government's continued refusal to grant Mr. Abdullah's requests to be placed under house arrest, as well as the ill-treatment suffered by him, such as a 25-day-long period of solitary confinement, failure to promptly provide a Qur'an and to provide a prayer mat, with harmful effects on his knees, as well as lack of medical care and meals appropriate for diabetics, despite a court order in that regard, do not point to the equal protection of the law.

100. For these reasons, the Working Group considers that Mr. Abdullah's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, on the grounds of discrimination based on political or other opinion aimed at and resulting in ignoring the equality of human beings and that it therefore falls within category V.

Consistent pattern of arbitrary arrest and detention of opposition politicians

101. The Working Group notes with concern the consistent pattern of arbitrary arrest and detention of opposition politicians in the judicial process marred by irregularities under the

[16] See A/66/268, paras. 26 and 61. See also rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which likewise refers to solitary confinement for a time period in excess of 15 consecutive days as prolonged solitary confinement.

[17] See opinion No. 15/2017, para. 93.

current administration.[18] The Working Group recalls the recent petition for judicial reform that was met by the Government's indefinite suspension of 54 signatory lawyers.[19] The military's frequent interference in the business of the People's Majlis casts further shadow on the rule of law in Maldives.[20]

102. The Working Group recalls that the duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests with all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers, and prison officers with relevant responsibilities, and all other natural and legal persons.[21]

103. As a party to the Charter of the United Nations and other international instruments on the international rule of law and human rights, it is incumbent upon the Government of Maldives to continue to strengthen democratic institutions, reinforce democratic practices and guarantee the independence of the judiciary and the primacy of the rule of law. The "rule of law" should not to be confused with "rule by law", the subversion of law as a tool for arbitrary rule by Government in collusion with the judiciary, paving the way for the hatred of anyone to lead to deviation from justice. The case of Mr. Abdullah's arrest, detention and imprisonment appears to fit the pattern of rule by law.[22]

Country visit to Maldives

104. The Working Group reiterates that it would welcome the opportunity to conduct a country visit to Maldives, in accordance with the request it made on 2 March 2017, so that it can engage with the Government constructively and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty.[23] The Working Group notes in particular the recent cases considered by the Working Group.[24] The Working Group also notes that Maldives has issued a standing invitation to all special procedure mandate holders since 2 May 2006 and looks forward to an invitation to visit the country.

Disposition

105. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Imran Abdullah, being in contravention of articles 2, 3, 5, 7, 9, 10, 11, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and of articles 1, 2, 7, 9, 10, 14, 18, 19, 21, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

106. Consequent upon the opinion rendered, the Working Group requests the Government of Maldives to remedy the situation of Mr. Abdullah without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Abdullah immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

---

[18] See opinions No. 15/2017; No. 59/2016; and No. 33/2015.

[19] Office of the United Nations High Commissioner for Refugees, "UN rights expert urges Maldives reforms after mass suspension of lawyers", 9 October 2017. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22211&LangID=E.

[20] Inter-Parliamentary Union, "IPU condemns military lockdown of Maldives Parliament", 23 August 2017. Available from www.ipu.org/news/news-in-brief/2017-08/ipu-condemns-military-lockdown-maldives-parliament.

[21] See opinions Nos. 22/2014, para. 25; 48/2013, para. 14; 36/2013, paras. 34 and 36; 35/2013, paras. 35 and 37; 34/2013, paras. 33 and 35; 9/2013, para. 40; 60/2012, para. 21; 50/2012, para. 27; and 47/2012, paras. 19 and 22.

[22] See opinion No. 59/2016, para. 68.

[23] See opinion No. 15/2017, para. 95.

[24] See opinions No. 15/2017; No. 59/2016; and No. 33/2015.

108. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Follow-up procedure

109. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Abdullah has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Abdullah;

(c) Whether an investigation has been conducted into the violation of Mr. Abdullah's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Maldives with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

110. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

111. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

112. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[25]

[*Adopted on 24 November 2017*]

[25] See Human Rights Council resolution 33/30, paras. 3 and 7.